

|   |  |  |  |
|---|--|--|--|
| <p>Attorney or Party Name, Address, Telephone &amp; FAX Nos., State Bar No. &amp; Email Address</p> <p>Nanette D. Sanders (State Bar No. 120169)<br/>nanette@ringstadlaw.com<br/>Christopher A. Minier (State Bar No. 190705)<br/>cminier@ringstadlaw.com<br/>RINGSTAD &amp; SANDERS, LLP<br/>4343 Von Karman Avenue, Suite 300<br/>Newport Beach, CA 92660<br/>Telephone: (949) 851-7450<br/>Facsimile: (949) 851-6926</p> <p><input type="checkbox"/> Individual appearing without attorney<br/><input checked="" type="checkbox"/> Attorney for: Karen Sue Naylor, Chapter 7 Trustee</p> |  | <p>FOR COURT USE ONLY</p>  |  |
| <p><b>UNITED STATES BANKRUPTCY COURT<br/>CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</b></p>  |  |  |  |
| <p>In re:</p> <p>WILLIAM S. STEWART and BARBARA E. STEWART,</p> <p>Debtor(s).</p>   |  | <p>CASE NO.: 8:18-bk-10053 ES<br/>CHAPTER: 7</p> <p><b>NOTICE OF SALE OF ESTATE PROPERTY</b></p> |  |

|  |                       |
|--|-----------------------|
| <b>Sale Date:</b> 12/19/2019   | <b>Time:</b> 10:30 am |
| <b>Location:</b> Courtroom 5A, 411 West Fourth Street, Santa Ana, California 92701 |                       |

**Type of Sale:** ☒ Public ☐ Private

**Last date to file objections: 12/05/2019**

**Description of property to be sold:**

Any and all of the bankruptcy estate's litigation claims against debtor Mr. Stewart's former employer, Advanced Innovative Recovery Technologies, Inc. ("AirTech"), including the claims asserted by the Trustee in the adversary proceeding she commenced against AirTech to recovery unpaid salary and interest thereon allegedly owed by AirTech to Mr. Stewart. A copy of the Trustee's Amended Complaint in the adversary proceeding is attached hereto.

**Terms and conditions of sale:**

The Trustee proposes to sell the estate's litigation claims "as-is" and "where-is," with no warranties or representations, to a successful overbidder that makes a higher and better offer to purchase the claims than the \$54,000 being offered by AirTech to settle the claims with the Trustee and the estate. Other proposed sale terms are set forth in the Notice of Motion attached hereto.

**Proposed sale price: \$ 54,000.00**

**Overbid procedure (if any):** The Trustee proposes that any initial overbid be in an amount of no less than \$59,000. Any subsequent overbids must be in increments of \$1,000 or more. Any party wishing to submit an overbid shall be required to provide the Trustee with a \$15,000 deposit by no later than December 16, 2019. See the attached Notice.

**If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:**

**Contact person for potential bidders (include name, address, telephone, fax and/or email address):**

Trustee's counsel: Christopher A. Minier, Esq., RINGSTAD & SANDERS, LLP, 4343 Von Karman Avenue, Suite 300, Irvine, CA 92660. Telephone (949) 851-7450. Facsimile (949) 851-6926. Email cminier@ringstadlaw.com.

Date: 11/20/2019

Nanette D. Sanders (State Bar No. 120169)  
nanette@ringstadlaw.com  
Christopher A. Minier (State Bar No. 190705)  
cminier@ringstadlaw.com  
Brian R.M. Nelson (State Bar No. 279620)  
brian@ringstadlaw.com  
RINGSTAD & SANDERS LLP  
4343 Von Karman Avenue, Suite 300  
Newport Beach, CA 92660  
Telephone: 949-851-7450  
Facsimile: 949-851-6926  
  
General Bankruptcy Counsel for Karen Sue Naylor,  
Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

In re  
  
WILLIAM S. STEWART and  
BARBARA E. STEWART,  
  
Debtors.

KAREN SUE NAYLOR, Chapter 7  
Trustee,

Plaintiff,

v.

ADVANCED INNOVATIVE  
RECOVERY TECHNOLOGIES, INC., a  
Nevada Corporation, aka AIR TECH

Defendant.

Case No. 8:18-bk-10053 ES

Chapter 7 Proceeding

Adversary Proc. No. 8:19-ap-01038 ES

**AMENDED COMPLAINT FOR:  
(1) BREACH OF CONTRACT; AND  
(2) FOR MONEY**

Current Status Conference:

Date: May 30, 2019

Time: 9:30 a.m.

Place: Courtroom 5A

411 West Fourth Street  
Santa Ana, California 92701

Karen Sue Naylor (the “Plaintiff”), the duly-appointed and acting Chapter 7 trustee in the above-captioned bankruptcy case of William S. Stewart and Barbara E. Stewart (the “Debtors”), respectfully alleges as follows:

**STATEMENT OF JURISDICTION AND VENUE**

1. This adversary proceeding is brought pursuant to Rules 7001(1) and 7003 of the Federal Rules of Bankruptcy Procedure.

2. The United States Bankruptcy Court for the Central District of California, Santa Ana Division (the “Court”) has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Sections 151, 152, 157, and 1334, 11 U.S.C. Sections 323 and 704, and General Order No. 13-05 of the United States District Court for the Central District of California, dated July 1, 2013.

3. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. Section 157(b)(2)(A) and (O).

4. Venue properly lies in this judicial district pursuant to 28 U.S.C. Section 1409 as this adversary proceeding arises under and in connection with a case under Title 11 which is pending in this District.

5. This adversary proceeding arises in and is related to the voluntary Chapter 7 bankruptcy case commonly known as *In re William S. Stewart and Barbara E. Stewart*, that is currently pending in this Court, Case No. 8:18-bk-10053 ES (the “Bankruptcy Case”).

**PARTIES TO THE ACTION**

6. Plaintiff is the duly-appointed and acting Chapter 7 trustee of the Debtors’ estate.

7. Plaintiff is informed and believes, and thereon alleges, that Defendant Advanced Innovative Recovery Technologies, Inc, aka AIR Tech (the “Defendant”) at all times alleged herein is and has been a Nevada corporation, with its corporate headquarters located in Lake Forest, California.

**STATEMENT OF STANDING**

8. Plaintiff, as the Chapter 7 trustee in the Bankruptcy Case, has standing to bring this action pursuant to 11 U.S.C. Sections 323 and 704.

///

///

///

///

**ALLEGATIONS**

9. The Bankruptcy Case was filed under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”)<sup>1</sup> on January 8, 2018 (the “Petition Date”).

10. The Plaintiff is informed and believes that in or about January of 2011, Debtor William S. Stewart (“Mr. Stewart”) entered into a written Employment Contract with the Defendant. A copy of this Employment Contract is attached hereto as Exhibit “A.” The Employment Contract provided that Mr. Stewart would be employed as the Defendant’s Chief Financial Officer (“CFO”) at a salary of \$5,000.00 per month. The term of the Employment Contract was January 1, 2011, to December 31, 2011, unless extended by mutual agreement. The Plaintiff is informed and believes that the term of Mr. Stewart’s employment with the Debtor was extended beyond December 31, 2011, by the mutual agreement of the Defendant and Mr. Stewart, and that Mr. Stewart’s salary remained \$5,000.00 per month at all times that he was employed by the Defendant. On March 17, 2014, Mr. Stewart ceased serving as the Defendant’s CFO and, instead, commenced serving as the Defendant’s Vice President of Research and Development. Mr. Stewart’s employment with the Debtor terminated on January 31, 2015.

11. The Plaintiff is informed that in or about 2011, the Defendant started getting into arrears on its obligation to make salary payments due to Mr. Stewart on account of his ongoing employment by the Defendant. Similarly, around this same time the Defendant got into arrears on its obligation to make payments to other officers, employees and independent contractors. The Plaintiff is informed and believes that in 2014 or 2015, Mr. Stewart and the Defendant entered into an oral agreement whereby the salary that Mr. Stewart was owed, or would in the future come to be owed, by the Defendant, and which the Defendant lacked the immediate ability to pay, would be permitted to accrue and would be converted into and treated as a loan owed by the Defendant to Mr. Stewart, with such loan being payable upon the demand of Mr. Stewart. In consideration for Mr. Stewart’s agreement to allow his salary to accrue as an unpaid loan payable by the Defendant, the Defendant agreed to pay simple interest of not less than 10% per annum on all accrued but unpaid salary that it owed to, or would later become liable to pay to, Mr. Stewart.

---

<sup>1</sup> Unless otherwise specified, all statutory references made herein are to the Bankruptcy Code.

1 Such interest would accrue retroactively on any unpaid salary was owed to Mr. Stewart by the  
2 defendant, from the date that such salary first came due.

3 12. The Plaintiff is informed and believes that the accrued but unpaid salary owed by  
4 the Defendant to Mr. Stewart was reclassified on the Defendant's books to be shown as a "note  
5 payable."

6 13. The Plaintiff is informed that on April 2, 2014, a meeting of the Defendant's  
7 Board of Directors (the "Board") was held. The Plaintiff is informed and believes that Mr.  
8 Stewart was a member of the Defendant's Board at this time, and that he attended the meeting.  
9 The Plaintiff is further informed that a quorum of the Board was present at this April 2, 2014,  
10 meeting. At this meeting, the Board voted on and approved a resolution that any unpaid amounts  
11 in arrears owed by the Defendant to its officers, employees and independent contractors  
12 (including Mr. Stewart) which came due on or after January 1, 2011, would accrue simple interest  
13 at the rate of not less than ten percent (10%) per annum from the date such amounts first became  
14 owed by the Defendant to the date that such amounts were paid (hereafter the "Board  
15 Resolution").

16 14. The Plaintiff is informed and believes that the Minutes of the April 2, 2014, Board  
17 meeting, as well as a written and signed Resolution of the Board, reflect the adoption of the Board  
18 Resolution.

19 15. The Plaintiff is informed and believes that the Defendant, on the one hand, and Mr.  
20 Stewart and other officers and employees of the Defendant on the Board who were owed accrued  
21 and unpaid salary or hourly wages by the Defendant (collectively the "Unpaid Board  
22 Employees"), on the other hand, entered into an oral agreement that the Defendant would permit  
23 the adoption of the formal Board Resolution to memorialize its obligation to pay interest to the  
24 Unpaid Board Employees on their accrued and unpaid pay, in exchange for the agreement of the  
25 Unpaid Board Employees to resign their membership positions on the Board once the Board  
26 Resolution was adopted. The Plaintiff is informed and believes that Mr. Stewart and the other  
27 Unpaid Board Employees resigned their membership positions on the Defendant's Board shortly  
28 after the Board Meeting and adoption of the Board Resolution on April 2, 2014.

17. The Plaintiff is informed that all of the Outstanding Debt is currently due and payable, and remains unpaid. On the “Schedule A/B: Property” filed by the Debtors in their Bankruptcy Case, the Debtors listed the Outstanding Debt as an obligation owed to them in the estimated amount of \$200,000.00 for “[b]ack salary owed (2014) plus promised interest” from “Advanced Innovative Recovery Technologies, Inc., Lake Forest CA.” The Plaintiff is informed and believes that the Defendant acknowledges owing Mr. Stewart at least \$50,900.00 of the Outstanding Debt alleged herein.

**FIRST CLAIM FOR RELIEF**

19. Plaintiff hereby incorporates each and every allegation contained in paragraphs 1 through 18, inclusive, as though fully set forth herein.

- 5 -

20. As previously alleged, Mr. Stewart and the Defendant entered into the written Employment Contract. Mr. Stewart and the Defendant subsequently entered into an oral agreement providing for the salary owed by the Defendant to Mr. Stewart, and which the Defendant could not timely pay, to accrue as a loan payable obligation on the Defendant's books, and for such amount to bear simple interest at the rate of 10% per annum until paid (the "Deferral Agreement"). The Deferral Agreement, and the Defendant's obligation to pay interest to Mr. Stewart and others under the Deferral Agreement, was later memorialized by the Board Resolution and the above-described documents evidencing same. (Hereafter, the Employment Agreement, the Deferral Agreement and the Board Resolution shall collectively be referred to as the "Agreement"). Mr. Stewart has performed or offered to perform all conditions, covenants and promises required by the Agreement.

21. Plaintiff is informed and believes, and on such information and belief alleges, that Defendant has breached the Agreement by, among other things, failing to pay the Outstanding Debt due under the Agreement, or any portion thereof, despite the fact that the Plaintiff has made demand therefor.

22. As a proximate result of the Defendant's breach or breaches of contract, the Plaintiff and the Debtors' bankruptcy estate have been damaged in an amount of \$198,080.79 as of December 31, 2018, plus additional interest thereon at the rate of \$28.91 per day from on and after January 1, 2019, until the Defendant's obligation is paid in full.

23. As a further proximate result of Defendant's breach or breaches of contract, the Plaintiff and the Debtors' bankruptcy estate have also incurred and will in the future incur consequential, special and incidental damages, including, but not limited to, attorneys' fees and costs in this adversary proceeding.

## **SECOND CLAIM FOR RELIEF**

### **(For Money)**

24. Plaintiff hereby incorporates each and every allegation contained in paragraphs 1 through 23, inclusive, as though fully set forth herein.

///



25. Plaintiff is informed and believes and, based upon such information and belief, alleges that at various points throughout 2011 to 2015, in Lake Forest, California, Mr. Stewart and the Defendant entered into the Agreement whereby the Defendant became indebted to Mr. Stewart in the principal outstanding amount of \$105,530.72 as of December 31, 2013, for unpaid salary on account of services rendered by Mr. Stewart to the Defendant while in the Defendant's employ. Such principal amount bears interest at the simple rate of 10% per annum and as of December 31, 2018, the Plaintiff is informed and believes that the Defendant's Outstanding Debt owed to Mr. Stewart totaled \$198,080.79, plus additional interest accruing thereon at the rate of \$28.91 per day thereafter until paid.

26. The Plaintiff is informed and believes that the full Outstanding Debt owed by the Defendant under the Agreement is now due and payable, with interest. Plaintiff has made demand therefore to Defendant, but Defendant has never paid any portion of the principal or interest owed, creating a default and breach under the Agreement.

27. There is now due and owing from the Defendant to the Plaintiff under the Agreement a total of \$198,080.79 (as of December 31, 2018), plus interest at the rate of \$28.91 per day thereafter until the Outstanding Debt is paid in full, plus any costs and attorneys' fees incurred by the Plaintiff herein as may be provided for in the Agreement or under applicable law.

#### **RESERVATION OF RIGHTS**

The Plaintiff reserves her right to supplement and amend the allegations contained in this Complaint, including, but not limited to the right to (i) allege further information regarding all Claims for Relief, (ii) make modifications and/or revisions to Defendant's name(s), (iii) allege claims against additional defendants, and/or (iv) allege additional causes of action arising in connection with the law and facts set forth herein (collectively, the "Amendments"), that may become known to the Plaintiff at any time during this adversary proceeding through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

#### **PRAYER FOR RELIEF**

WHEREFORE, on all causes of action alleged, Plaintiff prays for a judgment against the Defendant on this Complaint, as it may be amended from time to time, as follows:

- 1 A. For compensatory damages to be determined by the trier of fact;
- 2 B. For consequential, incidental and special damages according to proof;
- 3 C. For pre-judgment interest;
- 4 D. For attorneys' fees and costs; and
- 5 E. For such other and further relief as the Court deems just and proper.

6  
7 Dated: April 23, 2019

Respectfully Submitted,

8 RINGSTAD & SANDERS LLP

9  
10 By: /s/ Christopher A. Minier  
11 Christopher A. Minier  
12 Counsel for Plaintiff, Karen Sue Naylor,  
13 Chapter 7 Trustee, William S. Stewart and  
14 Barbara E. Stewart  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

B-1/s

### EMPLOYMENT CONTRACT

This Employment Contract is between Advanced Innovative Recovery Technologies, Inc., a Nevada Corporation, (AIR TECH) as Employer, and William S. Stewart, (Bill) as Employee.

**Title:** The title of Employee shall be Chief Financial Officer (CFO).

**Duties:** The CFO shall be responsible for the establishment and maintaining of:

- Accounting, Cost Control and Financial Reporting systems
- Payroll and Human Resources services
- Maintenance of adequate insurance coverages
- Governmental reporting requirements
- Arranging for income tax preparation

**Term:** The term of this contract shall begin on January 1, 2011 and end on December 31, 2011 unless earlier terminated by Employer or Employee, or extended by mutual agreement.

**Salary:** The beginning salary shall be \$5,000 per month, payable semi-monthly.

**Employee Benefits:** Employee shall be entitled to such benefits as provided to other Officers of the Employer.

**Work Schedule:** Employee is not required to work more than 40 hour per week, but may do so at his choice for no additional pay, and shall not be required to submit records of actual time worked.

**Work Locations:** Employee shall consider his main office to be located at 121 Agate Ave., Balboa Island, CA 92662. Employer shall provide a secondary office space for use of employee at main office location of Employer, currently at 20472 Crescent Bay Drive, Suite 104, Lake Forrest, CA 92630, for occasions when Employer or Employee feel it necessary to be there. Employee is not precluded from performing his duties at any location he chooses provided those duties are performed when and as required.

**On Call:** Employer may, at any reasonable time with reasonable notice, require Employee's presence at any place.

**Travel Reimbursement:** Employee shall be paid mileage and other travel reimbursement for any travel from his Balboa Island office to any other place for business purposes. Said mileage allowance shall be that allowed by the IRS, from time to time, currently for 2011 at \$0.51 per mile, plus actual expenses for overnight travel as allowed by the IRS.

**Eligibility for additional commission income:** Employee is a CA licensed Real Estate Broker DR ID: 00578642 and Mortgage Loan Originator, NMLS ID: 303536. As such, Employee shall be entitled to participate in commissions on real estate and loan transactions in addition to his salary, whether payable by Employer or others.

**Company Stock purchase and/or options:** Employee shall have the option to purchase \_\_\_\_\_ Shares of the company at \$ \_\_\_\_\_ per share at any time until \_\_\_\_\_

Dated: January 31, 2011. Employer: By: \_\_\_\_\_

President/CEO

Employee \_\_\_\_\_

William S. Stewart

14

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
4343 Von Karman Avenue, Suite 300, Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **AMENDED COMPLAINT FOR:  
(1) BREACH OF CONTRACT; AND (2) FOR MONEY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On April 23, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Christopher Minier** becky@ringstadlaw.com, arlene@ringstadlaw.com
- **Karen S Naylor (TR)** alane@ringstadlaw.com, knaylor@IQ7technology.com
- **United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On April 23, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Advanced Innovative Recovery Technologies, Inc.  
Attn: Robert Doherty, Chief Executive Officer  
23101 Lake Center Drive, Suite 100  
Lake Forest, CA 92630

Advanced Innovative Recovery Technologies, Inc.  
c/o Business Filings Incorporated, Registered Agent  
701 S Carson St., Ste 200  
Carson City, NV 89701

Advanced Innovative Recovery Technologies, Inc.  
c/o Business Filings Incorporated, Registered Agent  
818 W Seventh St., Ste 930  
Los Angeles, CA 90017

Law Office of Stephen A. Madoni  
Attn: Stephen A. Madoni, Esq.  
1151 Dove Street, Suite 235  
Newport Beach, CA 92660

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on April 23, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Via Personal Delivery:** Honorable Erithe A. Smith, U.S. Bankruptcy Court, Ronald Reagan Federal Building, 411 W. Fourth St., Suite 5040/Courtroom 5A-Bin beside 5<sup>th</sup> Floor Elevators, Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 23, 2019  
Date

Arlene Martin  
Printed Name

/s/ Arlene Martin  
Signature

Nanette D. Sanders (State Bar No. 120169)  
nanette@ringstadlaw.com  
Christopher A. Minier (State Bar No. 190705)  
cminier@ringstadlaw.com  
R. Chase Donahoo (State Bar No. 322191)  
chase@ringstadlaw.com  
RINGSTAD & SANDERS LLP  
4343 Von Karman Avenue, Suite 300  
Newport Beach, CA 92660  
Telephone: 949-851-7450  
Facsimile: 949-851-6926  
  
General Bankruptcy Counsel for Karen Sue Naylor,  
Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

In re  
  
WILLIAM S. STEWART and  
BARBARA E. STEWART,  
  
Debtors.

Case No. 8:18-bk-10053-ES

Chapter 7 Proceeding

**NOTICE OF MOTION FOR AN ORDER:  
(1) APPROVING COMPROMISE OF  
ESTATE'S LITIGATION CLAIMS OR,  
ALTERNATIVELY;  
(2) AUTHORIZING SALE OF LITIGATION  
CLAIMS TO SUCCESSFUL OVERBIDDER;  
AND  
(3) ESTABLISHING OVERBIDDING  
PROCEDURES**

Hearing:

Date: December 19, 2019

Time: 10:30 a.m.

Place: Courtroom 5A  
411 West Fourth Street  
Santa Ana, CA 92701

**TO ALL CREDITORS AND OTHER INTERESTED PARTIES:**

**PLEASE TAKE NOTICE** that on December 19, 2019 at 10:30 a.m., or as soon thereafter as the matter may be heard, in courtroom 5A of the United States Bankruptcy Court, located at 411 West Fourth Street, Santa Ana, California 92701, a hearing and auction will be held before the Honorable Erithe A. Smith, United States Bankruptcy Judge, on the motion Karen Sue Naylor, the Chapter 7 Trustee (the "Trustee") for the above-entitled bankruptcy estate (the "Estate") of William and Barbara Stewart (the "Debtors"), for an Order:

(1) Approving a settlement between the Trustee and Advanced Innovative Recovery Technologies, Inc. dba AIRTech (“AirTech” or the “Defendant”) regarding the Estate’s litigation claims to recover unpaid salary and interest thereon allegedly owed by AirTech to debtor William Stewart (hereafter the “Litigation Claims”), or; alternatively,

(2) Authorizing the sale of the Estate’s Litigation Claims against AirTech to a successful overbidder; and

(3) Approving proposed overbidding procedures for the auction sale of the Litigation Claims to an overbidder (hereafter the “Motion”).

The terms of the proposed settlement are summarized below, and are set forth in full in the written Settlement Agreement between the Trustee and AirTech (hereafter collectively the “Parties”), which is attached as Exhibit “1” to the full and complete moving papers.

### **SUMMARY OF MOTION**

The Debtors contend that AirTech owes Mr. Stewart unpaid salary, plus interest accrued thereon at the rate of 10% per annum, resulting in a total amount being owed by AirTech to Mr. Stewart of \$198,080.79 as of December 31, 2018 (the “Unpaid Salary”). Based on her appointment as the Trustee of the Debtors’ bankruptcy Estate, it is now the Trustee that has the exclusive right to prosecute, settle, collect, and/or sell Debtors’ Litigation Claims against AirTech to recover the Unpaid Salary.

The Trustee commenced an adversary proceeding against AirTech to recover the Unpaid Salary for the benefit of the Estate and its creditors. A copy of the Trustee’s Amended Complaint against AirTech in the adversary proceeding is attached as Exhibit “2” to the full and complete moving papers. AirTech timely filed an Answer to the Trustee’s Complaint in the adversary proceeding. While AirTech admits that it owes Mr. Stewart unpaid salary in the total amount of \$50,900.00, it denies that it ever agreed to pay any interest on the salary that it owes to Mr. Stewart. Accordingly, AirTech contends that its liability in the adversary proceeding cannot exceed \$50,900.00. Moreover, AirTech has asserted a number of affirmative defenses to the Litigation Claims asserted by the Trustee in the adversary proceeding, and AirTech contends that the applicability of such defenses largely, or completely, eliminates its liability to the Trustee for payment of the Unpaid Salary.

Subject to overbidding, the Trustee and AirTech have agreed to resolve the adversary proceeding, and any and all liability of AirTech to the Estate, for the payment of \$54,000.00 (the “Settlement Amount”) by AirTech to the Trustee. Pursuant to the settlement, and subject to Court approval, AirTech will pay the settlement amount by making 18 monthly installments of \$3,000.00 each to the Trustee from November of 2019, through April of 2021. In exchange, the Trustee will grant AirTech a full release of all liability to the Estate, and the Trustee and Estate shall waive the benefits and protections afforded by § 1542 of the California Civil Code.

The settlement is the result of extensive negotiations between the parties and their respective counsel.

///

1 **PLEASE TAKE FURTHER NOTICE** that although the Trustee is willing to settle and  
2 release the Litigation Claims against AirTech for the payment of \$54,000.00 by Airtech to the  
3 Estate, the Trustee is, alternatively, willing to sell the Estate's Litigation Claims to an overbidder  
4 that makes a higher and better offer to acquire the claims than the \$54,000.00 being offered by  
5 AirTech. In the event that the Litigation Claims are sold to a successful overbidder, with Court  
6 approval, such overbidder will be entitled to prosecute such claims in the adversary proceeding,  
7 and to retain any amounts recovered thereon from AirTech. Accordingly, by way of the Motion,  
8 and as an alternative to Court approval of the settlement, the Trustee seeks Court authorization to  
9 sell the Litigation Claims to the highest bidder at the hearing on the Motion, and in accordance  
10 with the proposed overbidding procedures described below. In furtherance of such a sale of the  
11 Estate's Litigation Claims to an overbidder, in the Motion the Trustee is requesting that the Court  
12 approve the following terms and conditions for the submission of any overbids, and the sale of the  
13 Litigation Claims to a successful overbidder:

14 (a) The initial overbid be in an amount at least \$5,000.00 more than the Settlement  
15 Amount (i.e., the initial overbid must be no less than \$59,000.00);

16 (b) Any overbidder must provide the Trustee with a deposit of no less than  
17 \$15,000.00 in cash or certified funds at least three business days prior to the scheduled  
18 hearing on this Motion (i.e., such deposit must be provided to the Trustee by no later than  
19 December 16, 2019);

20 (c) Any deposit provided by any overbidder to the Trustee shall become  
21 immediately non-refundable upon the selection of the overbidder as the successful  
22 purchaser of the Litigation Claims by the Court;

23 (d) Any subsequent overbids beyond the initial overbid shall be in increments of  
24 no less than \$1,000.00 more than the immediately preceding bid;

25 (e) Any successful overbidder must pay the full amount of its successful bid (i.e.,  
26 the full purchase price) to the Trustee within 30 days following entry of an Order by the  
27 Court authorizing the Trustee's sale of the Estate's Litigation Claims to such overbidder,  
28 or within such other time period as may be approved by the Court for the payment of the  
purchase price to the Trustee;

(f) the terms of the Trustee's sale of the Estate's Litigation Claims to any  
successful overbidder shall be on an "as-is" and where-is" basis, with no warranties or  
representations; and

(g) if a successful overbidder fails to timely conclude its purchase of the  
Litigation Claims, the Trustee shall be authorized to sell the affected claims to any backup  
bidder approved by the Court, on the terms and conditions specified herein, without  
further notice, hearing or Order of the Court.

Any party wishing to submit an overbid to acquire the Estate's Litigation Claims against  
AirTech is cautioned to strictly comply with the above-described bidding procedures. Failure to  
comply with the proposed bidding procedures might result in any non-complying bid being  
disregarded by the Court.

1 In addition to the foregoing, in the Motion the Trustee is requesting that the Court  
2 authorize her to return all deposits of unsuccessful overbidders within 10 days following the  
3 hearing on the Motion or as the parties otherwise agree. The Trustee further request that in the  
4 event the Court authorizes the sale of the Estate's Litigation Claims against AirTech to a  
5 successful overbidder, that upon payment of the full purchase price to the Trustee, that the  
6 Trustee be authorized to substitute such successful overbidder as the plaintiff in the adversary  
7 proceeding which she commenced against AirTech.

8 Given the above, and the facts and circumstances set forth in detail in the full and  
9 complete moving papers, the Trustee believes that the proposed settlement is a fair and reasonable  
10 compromise of disputed matters, is in the best interests of the Estate and its creditors, and should  
11 be approved by the Court. Alternatively, in the event that one or more parties wish to submit an  
12 overbid to acquire the Estate's Litigation Claims against AirTech that is higher and better than the  
13 consideration the Estate will receive under the settlement, the Trustee requests that the Court  
14 approve the proposed overbidding procedures set forth herein and in the Motion, and authorize  
15 the sale of the claims to such an overbidder on the terms and conditions set forth herein and in the  
16 Motion. The Trustee believes that such a sale of the Litigation Claims (as an alternative to the  
17 settlement) is in the best interest of the Estate and creditors and should be approved by the Court.

18 The Motion is based upon this Notice of Motion and on the separate, full, double spaced  
19 Motion, together with its Memorandum of Points and Authorities, Supporting Declaration of  
20 Karen Sue Naylor and exhibits attached thereto, all pleadings, papers and records on file with the  
21 Court in this proceeding, and such other evidence, oral or documentary, as may be presented to  
22 and considered by the Court, in connection with the Motion and the hearing scheduled to be held  
23 thereon.

24 The Motion is made pursuant to Bankruptcy Code § 363(b), and Rules 2002, 6004 and  
25 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the "F.R.B.P."), and is made on the  
26 grounds that the proposed settlement or sale is in the best interest of the Estate and its creditors.

27 The foregoing brief summary is not a complete reiteration of the entire moving papers.  
28 Parties-in-interest are cautioned to review the above-described entire moving papers, declaration  
and exhibits for further important details and provisions, all of which may be viewed at, or a copy  
obtained from, the Clerk of the Court at 411 West Fourth Street, Room 2030, Santa Ana, CA  
92701, or by contacting Becky Metzner at Ringstad & Sanders, LLP, 4343 Von Karman Avenue,  
Suite 300, Newport Beach, CA 92660, facsimile (949) 851-6926, telephone (949) 851-7450,  
email [becky@ringstadlaw.com](mailto:becky@ringstadlaw.com).

**IF YOU DO NOT OPPOSE THE MOTION, you need take no further action.**

**IF YOU WISH TO OPPOSE THE MOTION, pursuant to Local Bankruptcy Rule**  
**9013-1(f)(1), your opposition must be in writing and must be filed with the Clerk of the**  
**United States Bankruptcy Court (with a duplicate copy) located at 411 West Fourth Street,**  
**Santa Ana, CA 92701, and must be served upon counsel for the Trustee, Nanette D.**  
**Sanders, at Ringstad & Sanders LLP, located at 4343 Von Karman Avenue, Suite 300,**  
**Newport Beach, California, 92660, not less than fourteen (14) days prior to the scheduled**  
**hearing on the Motion. You must also serve your opposition upon the Office of the United**  
**States Trustee, located at 411 West Fourth Street, Suite 7160, Santa Ana, CA 92701, not less**

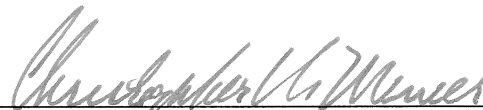


than 14 days prior to the scheduled hearing on the Motion. Pursuant to Local Bankruptcy Rule 9013-1(f)(2) any opposition or other response to the Motion is to consist of "a complete written statement of all reasons in opposition thereto..., declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities." Failure to timely file and serve such a Response and Request for Hearing may result in the Court granting the Motion without any hearing. SEE LOCAL BANKRUPTCY RULE 9013-1.

Date: November 19, 2019

RINGSTAD & SANDERS LLP

By:



Christopher A. Minier

Counsel for Karen Sue Naylor, Chapter 7 Trustee

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
4343 Von Karman Avenue, Suite 300, Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION FOR AN ORDER: (1) APPROVING COMPROMISE OF ESTATE'S LITIGATION CLAIMS OR, ALTERNATIVELY; (2) AUTHORIZING SALE OF LITIGATION CLAIMS TO SUCCESSFUL OVERBIDDER; AND (3) ESTABLISHING OVERBIDDING PROCEDURES** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On November 19, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Stephen A Madoni** stevemadoni@aol.com, nathally@madonilaw.com **Counsel to Advanced Innovative Recovery Technologies, Inc. dba AIRTech**
- **Christopher Minier** becky@ringstadlaw.com, arlene@ringstadlaw.com
- **Karen S Naylor (TR)** alane@ringstadlaw.com, knaylor@IQ7technology.com
- **Brian R Nelson** becky@ringstadlaw.com, brian@ringstadlaw.com; arlene@ringstadlaw.com
- **Nanette D Sanders** becky@ringstadlaw.com, arlene@ringstadlaw.com
- **United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On November 19, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**SEE ATTACHED SERVICE LIST**

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on November 19, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Via Personal Delivery:** Honorable Erithe A. Smith, U.S. Bankruptcy Court, Ronald Reagan Federal Building, 411 W. Fourth St., Suite 5040/Bin beside 5<sup>th</sup> Floor Elevators, Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 19, 2019

Arlene Martin

/s/ Arlene Martin

Date

Printed Name

Signature

Label Matrix for local noticing

0973-8

Case 8:18-bk-10053-ES

Central District of California

Santa Ana

Tue Nov 19 13:32:17 PST 2019

Santa Ana Division

411 West Fourth Street, Suite 2030,

Santa Ana, CA 92701-4500

Employment Development Dept

Bankruptcy Group MIC 92E

P.O. Box 826880

Sacramento, CA 94280-0001

Franchise Tax Board

Bankruptcy Section MS: A-340

P.O. Box 2952

Sacramento, CA 95812-2952

Amex

Correspondence

Po Box 981540

El Paso, TX 79998-1540

RETURNED MAIL-SEE NEW FORWARDING ADDRESS

~~Bank Of America~~

~~Nc4-105-03-14~~

~~Po Box 26012~~

~~Greensboro, NC 27420-6012~~

Barclays Bank Delaware

100 S West St

Wilmington, DE 19801-5015

Capital One

Attn: General Correspondence/Bankruptcy

Po Box 30285

Salt Lake City, UT 84130-0285

Capital One Bank (USA), N.A.

PO Box 71083

Charlotte, NC 28272-1083

UNDEL-RETURNED MAIL 10/23/18

~~Chase Card Services~~

~~Attn: Correspondence~~

~~Po Box 15278~~

~~Wilmington, DE 19850-5278~~

Citibank

Citicorp Cr Srvs/Centralized Bankruptcy

Po Box 790040

S Louis, MO 63179-0040

Citibank

Citicorp Credit/Centralized Bankruptcy

Po Box 790040 **DUPLICATE**

Saint Louis, MO 63179-0040

Citicards Cbna

Citicorp Credit Svc/Centralized Bankrupt

Po Box 790040

Saint Louis, MO 63179-0040

DMS TRUST C/O DAVID STONE

121 AGATE AVE

Newport Beach, CA 92662-1001

Discover Bank

Discover Products Inc

PO Box 3025

New Albany, OH 43054-3025

Discover Financial

Po Box 3025

New Albany, OH 43054-3025

Farmers & Merchants Ba

Po Box 2087

Long Beach, CA 90801-2087

Farmers And Merchant

Po Box 2087

Long Beach, CA 90801-2087

(p)FORD MOTOR CREDIT COMPANY

P O BOX 62180

COLORADO SPRINGS CO 80962-2180

Mufg Union Bank N.a.

400 Californiast 12th Fl

San Francisco, CA 94104-1302

Nordstrom FSB

Attn: Bankruptcy Department

Po Box 6555

Englewood, CO 80155-6555

PYOD, LLC its successors and assigns as assi  
of Citibank, N.A.

Resurgent Capital Services

PO Box 19008

Greenville, SC 29602-9008

Toyota Lease Trust

PO BOX 4102

Carol Stream, IL 60197-4102

(p)TOYOTA MOTOR CREDIT CORPORATION

PO BOX 8026

CEDAR RAPIDS IA 52408-8026

(p)US BANK

PO BOX 5229

CINCINNATI OH 45201-5229

United States Trustee (SA)

411 W Fourth St., Suite 7160

Santa Ana, CA 92701-4500

Barbara E. Stewart

121 Agate Ave

Newport Beach, CA 92662-1001

Karen S Naylor (TR)

4343 Von Karman Avenue, Suite 300

Newport Beach, CA 92660-2098

William S. Stewart

121 Agate Ave.

Newport Beach, CA 92662-1001

NEW FORWARDING ADDRESS:

Bank of America

Nc4-105-03-14

PO Box 31785

Tampa, FL 33631-3785

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Ford Credit  
National Bankruptcy Service Center  
Po Box 62180  
Colorado Springs, CO 80962

Toyota Motor Credit Co  
Po Box 8026  
Cedar Rapids, IA 52408

U.S. Bank National Association  
Bankruptcy Department  
PO Box 108  
St. Louis MO 63166-0108

(d)US Bank/Rms CC  
Card Member Services  
Po Box 108  
St Louis, MO 63166

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Toyota Lease Trust  
see Schedule D

|                     |    |
|---------------------|----|
| End of Label Matrix |    |
| Mailable recipients | 28 |
| Bypassed recipients | 1  |
| Total               | 29 |

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
4343 Von Karman Avenue, Suite 300, Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On November 20, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Stephen A Madoni** stevemadoni@aol.com, nathally@madonilaw.com **Counsel to Advanced Innovative Recovery Technologies, Inc. dba AIRTech**
- **Christopher Minier** becky@ringstadlaw.com, arlene@ringstadlaw.com
- **Karen S Naylor (TR)** alane@ringstadlaw.com, knaylor@IQ7technology.com
- **Brian R Nelson** becky@ringstadlaw.com, brian@ringstadlaw.com; arlene@ringstadlaw.com
- **Nanette D Sanders** becky@ringstadlaw.com, arlene@ringstadlaw.com
- **United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On November 20, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**Debtor:** William S. Stewart, 121 Agate Ave., Newport Beach, CA 92662

**Joint Debtor:** Barbara E. Stewart, 121 Agate Ave, Newport Beach, CA 92662

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on November 20, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Via Personal Delivery:** Honorable Erithe A. Smith, U.S. Bankruptcy Court, Ronald Reagan Federal Building, 411 W. Fourth St., Suite 5040/Bin beside 5<sup>th</sup> Floor Elevators, Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 20, 2019

Arlene Martin

/s/ Arlene Martin

Date

Printed Name

Signature